

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1591 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DATTU MAHADEV

Versus

CHHAALAL GOVINDLAL PATEL

Appearance:

MR PK JANI for Petitioner

MR MB GANDHI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/02/2000

ORAL JUDGEMENT

This is a revision application under Sec.29(2) of the Bombay Rent Act filed by the petitioner original defendant-tenant challenging the decree for eviction passed by the trial court and confirmed by the Appellate Bench of the Small Causes Court, Ahmedabad.

2. The respondent -original plaintiff is landlord of the suit premises bearing Municipal Census No.323/28/1/2/3 situated at Narnarayan Society, Maninagar. The defendant has let out the suit premises at the monthly rent of Rs.13/-. According to the plaintiff, the defendant was irregular in making payment of rent as he was in arrears of rent with effect from 11.2.1975. The plaintiff, therefore, sent a notice under Sec.12(2) of the Rent Act demanding arrears of rent and asking the defendant to vacate the suit premises. The defendant did not comply with the said notice and therefore, the plaintiff was constrained to file a suit bearing H.R.P.Suit No.4071 of 1976 in the Small Causes Court at Ahmedabad.

3. The defendant -tenant appeared in the suit and denied the averments made in the suit on various grounds. In the written statement Ex.15 filed by him, the defendant -tenant has, for the first time, raised the disputes about standard rent of the suit premises. However before the trial court, the tenant had not led any evidence to show that Rs.13/- was an excessive rent in any manner. The Appellate Bench has observed in Para 10 of the judgment that as a matter of fact, the defendant -tenant had admitted that the rent of Rs.13/per month is the standard rent of the suit premises. The learned trial Judge, therefore, by his judgment and decree dt. 10th July, 1980 decreed the suit for possession on the ground that the defendant has failed and neglected to pay up the arrears of rent. The defendant has not raised any dispute regarding the standard rent within one month from the date of receipt of the suit notice. Since the rent was inclusive of municipal taxes, the trial court had no alternative but to pass a decree for eviction under Sec.13(2)(a) of the Rent Act. Being aggrieved by the aforesaid decree for possession passed by the trial court, unsuccessful defendant -tenant preferred an appeal bearing Civil Appeal No. 341 of 1980 before the Appellant Bench of Small Causes Court, Ahmedabad. The Appellate Court had dismissed the appeal preferred by the defendant -tenant, and confirmed the decree of the trial court. Being further aggrieved by the judgment and decree of the Appellate Court dismissing the appeal and confirming the decree of the trial court, the aforesaid decree of the Appellate Court is impugned in this revision application.

4. To day the matter is called out for final hearing. I have heard Mr. Jani, learned advocate for the petitioner and Mr. Gandhi, learned advocate for the

respondent tenant.

5. The fact that the tenant was in arrears of rent as such is not in dispute. It is also not in dispute that the tenant has not raised any dispute about the standard rent within one month from the date of receipt of the suit notice. Rent is payable by month but the tenant had failed to pay up the same. The tenant who has failed to comply with the demand notice within one month, cannot escape from the decree of eviction under Sec.12(3)(A) of the Bombay Rent Act. As laid down by the Hon'ble Supreme Court in the case of Arjun Khiamal Makhijani vs. Jamnadas C. Tuliani & Ors., reported in 31(1) G.L.R. P. 209, the Hon'ble Supreme Court has taken the view that if the case falls under Sec.12(3)(a), the Court has no other alternative but to pass a decree for eviction. In view of the aforesaid position of law, there is no substance in the revision application and the same is required to be dismissed.

6. Mr. P.K.Jani, learned advocate for the petitioner at the time of hearing the present revision application argued that the tenant has already deposed in his deposition at Ex.58 that he had gone to the plaintiff-landlord on 6/7/1976 at about 5.00 p.m. for tendering arrears of rent with one Somabhai as well as one Ramubhai and to corroborate his say, he has also examined said Somabhai at Ex.60 but the tenant was told by the landlord that he would require the suit premises to be repaired and he can keep the money with him. It is further submitted that the tenant is presumed to have been ready and willing to pay the rent and it cannot be said that he was negligent in making the payment of rent. The courts below have negatived the said contention by giving cogent reasons namely that the aforesaid case is not put forward by the tenant in the reply to the demand notice and even the aforesaid theory is not stated in the written statement of tenant and for the first time, the said point is taken in the oral evidence. It is nothing but an after-thought say of the tenant. Therefore, the aforesaid story of tenant was not believed by court below. The courts below have examined the said aspect and have given weighty reasons for not accepting the said theory. This court while sitting in revision under Sec.29(2) of the Rent Act cannot re-appreciate the evidence. I see no merit in the said contention of the petitioner in this behalf. It is further argued by Mr. Jani that the plaintiff landlord was not the sole owner but his brother is also co-owner with him. In the present case, the co-owner i.e. his brother has not given any notice of demand, nor was he joined as a

co-plaintiff in the suit and therefore, the suit is not maintainable. The aforesaid contention was neither taken before the trial court nor before the appellate court and it is argued for the first time in this revision, there is no substance in the said contention. No other contention is raised by the learned advocate for the petitioner.

7. At this stage, Mr. Gandhi, learned advocate for the respondent pointed out that the tenant is not residing in the suit premises and he has already shifted to other premises. Pursuing showing the particulars given by Mr. Gandhi about tenant's shifting from the suit premises is placed on record which is signed by the respondent landlord. A copy of the same which is affirmed is kept on record.

8. In any case, since there is no substance in this revision application, the same is required to be dismissed. Accordingly the revision application is dismissed and rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

9. At this stage, Mr. Jani, learned advocate for the petitioner requested the court to give some reasonable time to vacate the suit premises. The revision application is of the year 1983 and in the facts and circumstances of the case, I grant time upto 30th June, 2000 to the petitioner tenant for vacating the suit premises, on condition that the petitioner defendant-tenant will file usual undertaking stating that he is in exclusive possession of the suit premises and he will hand over the vacant possession of the suit premises on or before 30th June, 2000. The said undertaking shall be filed within a period of three weeks from today before this Court. If the aforesaid undertaking is not filed within the time stipulated as above, it will be open to the respondent plaintiff-landlord to execute the decree forth with in accordance with law.

Date: 8/2/2000. -----
(ccshah)